

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10703 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GE COUNTRYWIDE CONSUMER FINANCIAL SERVICE LTD.

Versus

COLLECTOR & ADDL.SUPTD. OF STAMPS & REGISTRATION BHAVAN

Appearance:

1. Special Civil Application No. 10703 of 2002
MR AR GUPTA for Petitioner No. 1
Mr. PD Bhate, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 09/12/2004

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the respondent No.1 dated 5.7.2002/2.8.2002 by which the petitioner is directed to pay an amount of Rs. 8,81,800 being the amount of deficit stamp duty as well as

penalty. The said order came to be passed by the respondent No.1 in exercise of powers under Section 39(1)(b) of the Bombay Stamp Act, 1958 ["the Act" for short].

2. The document came to be executed between the petitioner and the owner of the property in question and the agreement was entered into which is termed as business agreement by the petitioner. The respondent No.1 was of the opinion that the said document is in fact a lease deed and therefore the stamp duty was required to be paid by the petitioner considering the same as 'lease deed' and therefore the said document was impounded. The document which was impounded by the respondent No.1 was the xerox copy of the original document. Proceedings were also initiated under Section 39(1)(b) of the Act. The petitioner was called upon to make payment of Rs. 8,81,800 towards deficit stamp duty and the petitioner was also directed to show cause why the penalty for the amount of Rs. 8,81,800 should not be imposed. Thereafter the impugned order had been passed on 5.7.2002/2.8.2002 by which the respondent No.1 has treated the document in question as a lease deed and on that basis the order has been passed which is the subject matter of this Special Civil Application under Article 226/227 of the Constitution of India.

3. Ms. Nita Pandit, learned advocate appearing for the petitioner has submitted that in fact even as per the document whatever the duty required to be paid is to be paid by the original-owner of the property in question and it is the liability of the original-owner to make payment of the stamp duty, if any. Considering Section 30 of the Bombay Stamp Act, it is submitted that in absence of any agreement a petitioner can be made liable, but in the present case there is a specific agreement in the document itself with regard to payment of stamp duty which has not been considered by the respondent authority and therefore requested to quash and set aside the said order. It is also further submitted that though it is stated in the impugned order that number of opportunities were given and show cause notices were issued for personal hearing but all the notices came to be served upon the petitioner after the date of hearing and therefore nobody could remain present on the date on which the hearing was fixed. She has further submitted that at last the petitioner had submitted a written submission on 28.6.2001 and considering the same the impugned order has been passed but no opportunity of personal hearing was given by the respondent No.1 and therefore the impugned order is in breach of principles

of natural justice. She has further submitted that in fact though it was specifically mentioned with regard to liability of the original land owner on the basis of Section 30 of the Act and that xerox copy of the document cannot be impounded the said argument has not been considered and dealt with by the respondent No.1 while passing the impugned order and therefore requested to set aside the impugned order.

4. An affidavit-in-reply has been filed on behalf of the respondent denying the allegations with regard to nonreceipt of the notice by the petitioner. It is further submitted that in fact the notice dated 28.5.2001 was served upon the petitioner and on the basis of that a reply came to be filed on 29.6.2001 which has been considered by the respondent No.1. Therefore Shri Bhate, learned AGP has requested to dismiss the present Special Civil Application by further pointing out that in fact the document in question is a lease deed and not a simple document of business agreement between the parties. He, therefore, requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing for the parties. It is the contention on behalf of the petitioner that all through out the petitioner had received the notices to remain present for hearing after the actual date of hearing and therefore nobody could remain present on behalf of the petitioner. Number of letters/communications are produced on record to show that the notices were received by the petitioner after the date of hearing. Even so far as notice dated 28.5.2001 with regard to hearing fixed on 11.6.2001 is concerned by communication dated 15.6.2001 the petitioner has informed the respondent No.1 that the said notice has been received on 13th June 2001, i.e. after the date of hearing. Even considering the written submission dated 29.6.2001, the impugned order has been passed, but from the bare reading of the impugned order dated 5.7.2002/2.8.2002, it is not borne out that all the submissions made by the petitioner in the Written Submission have been considered by the respondent No.1. It appears that the respondent No.1 has not considered the submission on behalf of the petitioner with regard to the agreement itself in which it is stated that it will be the liability of the original-owner of the property in question to pay the stamp duty if any and considering Section 30 they are not required to make any payment. The other aspect with regard to whether the xerox copy of the document can be impounded or not is also not considered by the respondent No.1 while passing the

impugned order. Ms. Pandit has relied upon the judgment of the Full Bench of this Court in the case of The Chief Controlling Revenue Authority, Ahmedabad. Vs. Nutan Mills Ltd., Ahmedabad reported in 1977 G.L.R. 409 in support of her submission that xerox copy of the document cannot be considered to be the instrument and therefore the same cannot be impounded. This aspect has also not been considered by the respondent No.1.

6. Under the circumstances, the impugned order dated 5.7.2002/2.8.2002 is required to be quashed and set aside and the same is hereby quashed and set aside. The matter is remanded to the respondent No.1 with a direction to the respondent No.1 to pass a detailed speaking order dealing with all the contentions which are raised in the present Special Civil Application and/or which may be raised at the time of hearing, after giving an opportunity to the petitioner of personal hearing and considering the written submission dated 28.6.2001. In view of the fact that earlier the petitioner had not remained present for personal hearing, though it is the case of the petitioner that notices were served upon the petitioner after the actual date of hearing and which is denied by the respondent in the affidavit-in-reply, without going into the same, the petitioner is required to pay the costs which is quantified at Rs. 2,500/= to the respondent No.1. The petitioner shall pay the sum of Rs. 2,500/= by way of costs to the respondents on or before 29th December 2004. Ms. Pandit, learned advocate appearing on behalf of the petitioner has assured that on the next date of hearing they will remain present and make necessary submissions.

6.1. In view of the controversy with regard to service of notice upon the petitioner after the date of hearing, the petitioner shall remain present before the respondent No.1, at the first instance, on 29th December 2004 and the respondent No.1 may fix a date subsequently and inform the petitioner on that very date with regard to next date of hearing and obtain necessary signature.

7. Rule is made absolute to the aforesaid extent.

[M.R. Shah, J.]

rmr.